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January 30, 2020

The Hon. Jay Clayton  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

RE: File Number S7-22-19; Proposed Rule: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice

Dear Chairman Clayton:

I am writing in response to the request for comment for Proposed Rule, File Number S7-22-19, "Amendment to Exemptions from the Proxy Rules for Proxy Voting Advice".<sup>1</sup>

The proposed changes put forth by the Commission and its staff on this Proposed Rule should be lauded. Proxy voting advice, while a valuable service to many investment managers and corporations, is often weaponized to the benefit of a select few. Voting recommendations for proxy proposals should be provided with all investors in mind. Recommendations as such should not cater to the agendas of a specific subset of investors. The Commission appropriately has proposed further regulations to further shape the formulation, transmission, and receipt of proxy voting.

Upon reviewing this proposed rule change, an issue pertinent to the transmittal – or in this case, implementation – of proxy voting advice, automatic voting, also known as "robo-voting" would be beneficially affected by the change. While the practice of automatic voting might seem efficient to proxy advisory clients, such as pension funds, who must vote thousands of ballots, it is detrimental to the responsibility they have to those who invest their money with them (i.e., their pensioners). Specifically, their fiduciary duty is to maximize their members' returns. By neglecting to carry out proper due diligence upon receiving a voting recommendation from a proxy advisor, and instead automatically voting the proxy advisor's recommendation, many investors relying on their pension fund's smart and balanced investment strategies for retirement ultimately lose.

And, although some have said that this rule change reduces shareholder rights, they in fact, improve them. For instance, in an opinion in Forbes, Christopher Burnham, chief executive officer and chairman of Cambridge Global Capital, writes how they will be improved with the rule change:

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<sup>1</sup> U.S. Securities and Exchange Commission, Proposed Rule: Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice (November 5, 2019), accessed: <https://www.sec.gov/rules/proposed/2019/34-87457.pdf>.

“Many public pensions plans rely on proxy advisory firms to help inform them on shareholder resolutions. However, proxy advisory firms today have an outsized influence on shareholder resolutions and impact every aspect of the shareholder resolution process, with public pensions simply ‘buying’ what proxy advisors are ‘selling.’ Proxy advisors make recommendations to their clients on shareholder resolutions to put forward, and then how to vote on these shareholder resolutions. Moreover, proxy advisors...typically then cast the vote for their clients in the shareholder resolution vote. How this is not a violation of fiduciary responsibility on the part of the pension plans, I do not know.”<sup>2</sup>

This seemingly inherent breach of duty alone justifies the Commission’s efforts to further regulate this snug transactional practice of automatic voting.

Supporting this point, Dr. Wayne Winegarden, senior fellow at the Pacific Research Institute, writes that “the proposed rule clarifies that investment advisors cannot blindly follow the advice of a proxy advisory firm.”<sup>3</sup> He continues, “Investment advisers have a fiduciary responsibility to enhance shareholder value while adhering to the goals and objectives of the fund. It is inconsistent with this responsibility to outsource a fund’s voting decision to a third party without conducting adequate review of the recommended voting strategies.”<sup>4</sup>

Moreover, while pensioners and other retail investors would benefit from these amendments, their companies also support the Commission’s Proposed Rule. A new survey this month from Willis Towers Watson offers compelling data. Brian Croce reports in Pensions & Investments, “A majority of U.S. public companies believe [SEC] proposed rules, if finalized, would cause proxy advisers to be more transparent... Of the 105 companies surveyed, 83% said the proposed rules would increase transparency.”<sup>5</sup> Upon the survey’s release, Don Delves, North America head of executive compensation at Willis Towers Watson, stated “These proposals are, above all, about greater transparency and clarity around... recommendations. They could go a long way toward eliminating errors and ultimately help shareholders make informed proxy voting decisions.”<sup>6</sup>

I founded my own boutique law firm 18 years ago. The last time these solicitation rules regarding proxy advisors were updated was nine years before that. For the sake of

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<sup>2</sup> Burnham, Christopher, “Is ‘Robo-Voting’ An Abdication Of Fiduciary Duty?”, Forbes (February 27, 2019), accessed: <https://www.forbes.com/sites/christopherburnham/2019/02/27/is-robot-voting-an-abdication-of-fiduciary-duty/#4a461d254edb>.

<sup>3</sup> Winegarden, Wayne, SEC Comment Letter, “Re: File No. S7-22-19 Proposed Rule Regarding Proxy Solicitations” (December 12, 2019), accessed: <https://www.sec.gov/comments/s7-22-19/s72219-6534522-200542.pdf>.

<sup>4</sup> Ibid.

<sup>5</sup> Croce, Brian, “Companies say SEC proposal on proxy firms will increase transparency – survey”, Pensions & Investments (January 15, 2020), accessed: <https://www.pionline.com/governance/companies-say-sec-proposal-proxy-firms-will-increase-transparency-survey>.

<sup>6</sup> Associated Press, Press Release: “U.S. companies will respond to proxy advisor voting recommendations, if allowed by SEC”, Willis Towers Watson (January 15, 2020), accessed: <https://apnews.com/3588bcb775b8e56b2e24c454f7fe1ec3>.

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transparency, investor returns, and our nation's employers, it is high time for these amendments to the proxy rules for proxy voting advice to be implemented. Most importantly, fixing the conflicted practice of automatic voting will instill further confidence in our markets, while protecting shareholder integrity.

Thank you for your consideration of my comments.

Sincerely,

**Christopher A. Zampogna**

Christopher Zampogna  
Zampogna, P.C.

CC: The Hon. Robert J. Jackson, Jr., Commissioner  
The Hon. Allison Herren Lee, Commissioner  
The Hon. Hester M. Peirce, Commissioner  
The Hon. Elad L. Roisman, Commissioner  
Ms. Vanessa A. Countryman, Secretary  
Mr. Daniel S. Greenspan, Special Counsel, Office of Rulemaking

